

JACOB HALL.

[To accompany Bill H. R. No. 584.]

APRIL 6, 1860.

Mr. EDWARDS, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of Jacob Hall, respectfully submit the following report:

Mr. Hall was a contractor for carrying the mail between Independence, in Missouri, and Santa Fé, in New Mexico, a distance of about 850 miles, 500 of which is through Indian country. The contract with the Post Office Department was entered into April 24, 1858; and by it he undertook to carry the mail in six-mule coaches once a week, from July 1, 1858, to June 30, 1862, for \$39,999 per annum, payable quarterly.

The contract contained the usual stipulations of promptness and fidelity on the part of the contractor, and reservations of right of varying the service at its pleasure on the part of the department.

Under the reservations a variation requiring increased speed on and after the 23d of August, 1859—reducing through time from 20 to 15 days—was ordered, and the compensation increased \$15,000 per annum, commencing at that date.

In September, 1859, in Kansas Territory, near Pawnee Fork, the employes of the memorialist, then engaged in the transportation of the mail under the contract, were attacked by Indians, two of the men killed and a third wounded, seven mules and one horse carried away, and one mule so much injured that it was killed as an act of mercy, and other property connected with the train, of various kinds, destroyed or utterly lost to the owner.

The facts of the destruction and loss of the property aforesaid, and its approximate value, may be regarded as established, although resting upon affidavits taken *ex parte*.

Three witnesses—one of whom was present and wounded, and the other two had knowledge of the property, and that it was in use at that time and place—testify to the loss and to the value, in their judgment, estimating it in detail, and making a total of \$2,608.

From this testimony the committee would feel justified and enabled to make up an award in favor of the memorialist, though for, perhaps, a somewhat reduced amount, if they could regard the government as liable to indemnify him, which, however, they do not, but are of the opinion that he has no claim, legal or equitable, for indemnity directly from the public treasury. They are not aware of any obligation on the part of the government to insure citizens against loss from injuries perpetrated on their persons or property by Indians, any more than against loss for injuries to either by the wrongful acts of other citizens; and if it were otherwise, it would be questionable whether, in this case, compensation had not been made in advance for the hazard out of which the injury sustained by the memorialist has arisen.

The government invites proposals for a certain service entire and complete, accompanied by a statement of the price for which it will be done; the government to furnish nothing and stipulating nothing, except to pay as it shall contract to do as the service shall be performed.

In such case it is the opinion of the committee that it is to be presumed that the party proposing, in determining upon the amount of compensation he will claim, will take into account the dangers as well as the difficulties and the requirements which the service will involve. It would most certainly be so in transactions between individuals, and the committee cannot regard it as likely to be different in those between the government and its citizens. How far the amount of compensation in this case sustains this view, it is hardly necessary to inquire. Certain it is, that in the contract with Mr. Hall there is no covenant on the part of the government to protect him in the service, or to indemnify him for any losses he may sustain in its performance.

If the above was the only aspect to be presented of his case, the committee could only report adversely. A question, however, remains: whether he may not indirectly have redress, through the action of the government, from those who have done him the injury of which he complains.

It is stated both in the memorial and in the testimony that the attack upon the train was made by the Kiowa Indians. In treaties with the Indians a very usual stipulation is, that they will do no injury to the property of the citizens of the United States, and that if any such is done by them, the government may withhold any annuity to be paid them, or sufficient thereof, until they shall have made compensation.

On referring to the laws, it is found that a treaty exists with the said Kiowas, in connexion with two other tribes, made July 27, 1853, and by its terms the government agrees to pay to the three tribes the sum of \$18,000 annually. In interfering to compel reparation in this case, the committee are of opinion that it would be but justice to the Indians implicated, and who, if guilty, are to be amerced; that before they shall be so adjudged they shall have the opportunity of being heard. And, under the circumstances, they are of the opinion that the memorial, with the accompanying papers, should be referred to

the Secretary of the Interior, with authority to inquire into the case, to notify said Kiowa Indians, or their agent, of this application, and to ascertain with more certainty the amount of loss sustained, and by what Indians it was caused; and if satisfied that it was caused by the Kiowas, as alleged, to withhold their annuity until they shall make reparation by paying to said Hall the amount which he shall adjudge to be the value of the property destroyed and carried away. And for this purpose they report the accompanying bill.

